

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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Kenneth J.V.,

No. 22-cv-373 (KMM/DJF)

Plaintiff,

v.

ORDER

Kilolo Kijakazi,  
Commissioner of Social Security,

Defendant.

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The above matter comes before the Court upon the Report and Recommendation (R&R) of United States Magistrate Judge Dulce J. Foster, dated January 27, 2023. No objections have been filed to that R&R.

Judge Foster recommends that the parties' cross-motions for summary judgment be denied, that their supplemental motions for summary judgment be denied, and that Plaintiff's motion for remand be granted. In short, Judge Foster concluded that the Court was unable to discern the Administrative Law Judge's rationale for the decision denying Plaintiff's disability claim because the mental residual functional capacity finding included a limitation to "occasional" contact with others, but omitted any explicit limitation to "superficial" contact. The ALJ found the opinions of two psychological consultants who had concluded Plaintiff would be limited to "superficial" contact with others to be persuasive, but offered no explanation for his failure to incorporate that limitation into the RFC while instead limiting him to "occasional" interactions. Judge Foster concluded that

it appeared likely that the ALJ considered the terms to be synonymous, a conclusion which the Appeals Council has recently explained is erroneous. Because that error is potentially outcome-determinative, Judge Foster found that remand is required.

The Court reviews de novo any portion of the R&R to which specific objections are made. 28 U.S.C. § 636(b)(1); D. Minn. LR 72.2(b). In the absence of objections, the Court reviews the R&R for clear error. *Nur v. Olmsted County*, 563 F. Supp. 3d 946, 949 (D. Minn. 2021) (citing Fed. R. Civ. P. 72(b) and *Grinder v. Gammon*, 73 F.3d 793, 795 (8th Cir. 1996) (per curiam)). Based on a careful review of the R&R and the record in this case, the Court finds no error and accepts the R&R.

IT IS HEREBY ORDERED that:

1. The Report and Recommendation [Dkt. 36] is ACCEPTED.
2. Plaintiff's motion and supplemental motion for summary judgment [Dkt. 17, 31] are DENIED.
3. Defendant's motion and supplemental motion for summary judgment [Dkt. 19, 21] are DENIED.
4. Plaintiff's motion for remand [Dkt. 24] is GRANTED.
5. The Commissioner's decision denying Plaintiff's DIB and SSI applications is REVERSED.
6. This matter is remanded to the Social Security Administration pursuant to sentence four of 42 U.S.C. § 405(g) for further proceedings consistent with the Report and Recommendation.

**Let Judgment Be Entered Accordingly.**

Date: **March 7, 2023**

*s/ Katherine M. Menendez*

Katherine M. Menendez  
United States District Judge